

REMARKS

As of the 03 September 2008 *Office Action*, Claims 4-8, 10-15, and 29 are pending in the Application. In the *Office Action*, Examiner rejects all pending Claims. Applicant thanks Examiner with appreciation for the careful consideration and examination given to the Application. By the *Response*, Applicant amends Claims 4 and 10, cancels Claims 5 and 11, and adds new Claims 30-32. Claims 6-7, 12-13, 15, and 29 were previously presented, Claims 8 and 14 are in their original format, Claims 16-24 stand withdrawn, and Claims 1-3, 5, 11, 25-28 are canceled. No new matter is believed introduced in this submission as at least ¶¶ [0053]-[0054] and Figs. 3-7 of the *Publication* of the present Application support the amendments. (*See U.S. Patent Publication No. 2005/0286979*)

Applicant submits this *Response* solely to facilitate prosecution. As such, Applicant reserves the right to present new or additional claims in this Application that have similar or broader scope as originally filed. Applicant also reserves the right to present additional claims in a later-filed continuation application that have similar or broader scope as originally filed. Accordingly, any amendment, argument, or claim cancellation presented during prosecution is not to be construed as abandonment or disclaimer of subject matter.

Accordingly, after entry of this *Response*, Claims 4, 6-8, 10, 12-15, and 29-32 are pending in the Application. No new matter is introduced in this *Response*. It is respectfully submitted that the present Application is in condition for allowance for the following reasons.

I. Rejections Under §112

Claims 5 and 11 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner alleges that the disclosure does not have a basis for the feature that “the alignment means is detachable from the end part with the end part remains inserted into the foundation.” Applicant respectfully disagrees. The Specification explicitly discloses that the alignment means is detachable from the end part. (Specification, ¶¶[0008], [0012], [0022], [0035], and [0054]. Moreover, the Specification also states that the alignment means can be detached from the end part after the end part has been inserted and set in the foundation: “Preferably the apparatus further comprises means for recovering the alignment means after the structure has been mounted in the foundation.” (Specification, ¶[0022]; see also ¶¶[0035] and [0054]). Therefore, Applicant respectfully requests that the rejections be withdrawn.

Additionally, Applicant submits that the Specification also teaches that the alignment means can be reattached to the end part, as recited in Claim 32. An element that is detachable can inherently also be reattached. Furthermore, the reason for retrieving the alignment means is clearly so that it may be reused to align another structure. Therefore, it must be capable of being attached to such a structure after it is detached and retrieved.

II. Rejections Under §§102 and 103

In the *Office Action*, Claims 4-7 and 29 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent Nos. 4,611,953 to Owens (“Owens”), 4,459,931 to Glidden (“Glidden”), and 3,788,396 to Shatto et al. (“Shatto”). Claim 8 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Owens in view of U.S. Patent No. 4,406,094 to Hempel et al. (“Hempel”) or U.S. Patent No. 4,222,683 to Schaloske et al. (“Schaloske”). Moreover, Claim 8 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Glidden in view of Hempel or Schaloske. Also, Claim 8 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shatto in view of Hempel or Schaloske. Claims 10-14 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Owens or Glidden in view of U.S. Patent No. 4,789,271 to Sullaway et al. (“Sullaway”), U.S. Patent No. 6,409,428 to Moog et al. (“Moog”), U.S. Patent No. 4,869,615 to Galle (“Galle”), or U.S. Patent No. 4,902,169 to Sutton (“Sutton”). Claim 15 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Owens or Glidden in view Sullaway, Moog, Galle, or Sutton in further view of Hempel or Schaloske. Applicant respectfully submits that the cited references fail to disclose each and every claimed feature for the following reasons.

a. Claims 4, 6-8, and 30-31 Are Patentable Over The Cited References

Claim 4, as amended, recites features not disclosed in the cited references. In particular, Claim 4 recites that the alignment means is detachable from the end part. As this feature is absent from the cited references, it is respectfully submitted that Claim 4, and those Claims ultimately dependent therefrom, are novel over the cited references.

The cited references do not disclose an alignment means that is detachable from the end part after the end part is inserted in the foundation, as recited in Claim 4. The Examiner alleges that the alignment means disclosed in the cited references can be considered removable because each is capable of being removed “such as when the structure is removed from the socket or by shearing.” Applicant respectfully disagrees with the Examiner’s interpretation.

Claim 4 specifically recites that the alignment means is detachable from the *end part* itself, which is inserted into a foundation, not merely detachable from the foundation. In accordance with the Examiner's statements, the alignment means disclosed in the cited references are removable from the *socket* when the entire structure is removed from the socket, but are not actually detachable from the *structure itself*. Therefore, the cited references fail to disclose an alignment means that is detachable from the end part of the structure inserted into the foundation, as recited in Claim 4.

Additionally, the Examiner's interpretation of the term "detachable" to include shearing an item from a structure is not reasonable. An element that requires breaking or shearing to be separated from another structure cannot be considered detachable. The Examiner's interpretation would render the term detachable meaningless because any bond can be severed, hence any item can be sheared or broken off from another. Under the Examiner's interpretation nothing could be considered permanently attached and everything would be detachable. The Federal Circuit struck down a similarly broad interpretation, and clearly stated that if an element must be broken to be removed, it is permanent and not detachable. (*K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1365 (Fed. Cir. 1999), "Here, for example, we recognize that [**17] the term 'permanently' has what can be said to be the flavor of infiniteness about its meaning, which might raise questions about the use of the term in this claim: even the most permanent of 'permanently affixed' connections between the bootie and the base of the skate can, after all, be undone upon the total destruction of the skate itself. This, however, does not mean that because no connection between the bootie and skate can be "infinitely" permanent, there can be no ordinary and accustomed meaning for the claim term. Indeed, we would be hard pressed to describe anything as 'permanent' if that term is understood to require an infinite duration.").

Further, the cited references fail to disclose the features of newly presented Claim 30. In particular, Claim 30 recites a means for recovering the alignment means from the end part after the end part is inserted into the foundation and the alignment means is detached from the end part. Support for this feature can be found in ¶[0022] of the Specification. The cited references fail to disclose a means for recovering the alignment means after it has been removed from the end part. This deficiency, however, is expected because the alignment means of the cited references are not actually detachable, therefore recovery after detachment is moot.

Further, the cited references fail to disclose the features of newly presented Claim 31. In particular, Claim 31 recites that the alignment means is moveable along the length of end part. Support for this feature can be found in ¶[0053] of the Specification. The alignment means in the cited references identified by the Examiner are fixed or pivotally connected to the structures, and hence cannot move along their lengths. Therefore, the cited references fail to disclose the alignment means moveable along the length of end part, as recited in Claim 31.

For at least these reasons, the cited references, alone or in combination, fail to disclose each and every feature of Claims 4, 30, and 31. Thus, Applicant respectfully submits that Claims 4, 30, and 31 are patentable over the cited references, and are in condition for allowance. Further, Claims 6-8 are also believed to be in condition for allowance at least due to their ultimate dependence upon Claim 4, and further features defined therein.

b. Claims 10, 12-15, and 32 Are Patentable Over The Cited References

Claim 10, as amended, recites features not disclosed in the cited references. In particular, Claim 10 recites that the alignment means is detachable from the end part. As this feature is absent from the cited references, it is respectfully submitted that Claim 10, and those Claims ultimately dependent therefrom, are novel over the cited references.

As discussed above with regard to Claim 4, the cited references do not disclose a detachable active adjustable alignment means. Currently amended Claim 10 recites an alignment means that is detachable from the end part after the end part is inserted in the foundation.

For substantially similar reasons, the cited references fail to disclose an alignment means that can be reattached to the end part, as recited in newly presented Claim 32. The alignment means, as recited in Claim 32, must be reattachable to the ***end part***. Therefore, reinserting a structure having an alignment means attached thereto back into a socket would not meet this limitation. Reattaching also reasonably implies an action intended to be repeatable multiple times, and that a reverse of the detachment process and mechanism is employed. Therefore, simply gluing or otherwise fixing an element of the alignment means that has been sheared off from the main structure could not be reasonably interpreted to correspond to reattaching.

For at least these reasons, the cited references, alone or in combination, fail to disclose each and every limitation of Claims 10 and 32. Thus, Applicant respectfully submits that Claims 10 and 32 are patentable over the cited references. Further, Claims 12-15 are also believed to be allowable due to their ultimate dependence upon Claim 10, and further features defined therein.

III. Fees

This *Response* is being filed within five months of the mailing date of the *Office Action*. Therefore, a two month extension of time fee is believed due, and is paid via EFS-Web. As amended, the Application does not contain Claims in excess of the number paid for upon original filing, thus no Claim fees are believed due. Applicant expressly requests continued examination and pays the required fee via EFS-Web. Nonetheless, the Commissioner is hereby expressly authorized to charge any fees that may be required to Deposit Account No. 20-1507.

CONCLUSION

By the present *Response*, this Application has been placed in full condition for allowance. Accordingly, Applicant respectfully requests early and favorable action. Should the Examiner have any further questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 404.885.3340.

Respectfully submitted,

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